IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Radhey Shyam Panwar
Vs.
The Judge, Labour Court & Ors.

S.B. CIVIL WRIT PETITION NO.2454/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 16th October, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Ashvini Swami, Advocate for the petitioner.
Mr.Kailash Joshi, Advocate for respondents.

BY THE COURT

This writ petition is directed against the award dated 08th May, 2001 passed by the learned Labour Court which while answering the reference held removal of the petitioner

workman by the Management on 09th August, 1986 as legal and justified.

The case set up by the petitioner before the learned labour court is that he was initially appointed on the post of Naka Guard with the respondents on 11th July, 1985 and was later given permanent appointment on this post on 08th August, 1985 and continued to work with them till 08th August, 1986. The respondents did not make compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947') while removing the petitioner workman from service even though he had completed 240 days of the calendar year immediately preceding the date of his removal. Neither notice nor even compensation was paid to him. The employees working with the petitioner namely Hemraj, Murlidhar and Gopi Kishan were regularized. The respondents did not published any seniority list at the time of his removal and thus violated the provisions of Section 25-H of the Act of 1947 as also Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1947 (for short 'the Rules of 1947).

The claim of the petitioner was contested by the respondents who in their reply before the Tribunal contended that the petitioner was appointed by the then Chairman of the Municipal Board on 11th July, 1985 for a period of 28 days. He was thereafter again appointed by the then Chairman, Shri Kishore Singh illegally in the regular pay scale on 08th August, 1985. The order of his appointment was neither entered anywhere in record nor was even entered in the dispatch register. It was at the very late stage that the petitioner submitted details about his attendance from 08th August, 1985 to 15th January, 1986 to the respondents on 16th January, 1986. There was no vacant post on which the petitioner could be appointed. He however secured such appointment in a clandestine manner and did not show it on record so that after having kept it secret for long time he could strengthen his claim for regularization in service. It was stated that the petitioner did not appear to attend his duties after 15th January, 1986 and therefore his case would not fall within the purview of retrenchment. Identically the petitioner submitted that he worked only from 08th August, 1985 to 08th August, 1986 which

period hardly comes to 161 days. Thus, there was no question of violation of Section 25-F of the Act of 1947. It is submitted that the Chairman of the Municipal Board had no legal authority to appoint the petitioner. The petitioner has raised the dispute nine years after his alleged removal whereas Government of Rajasthan by this time already abolish octroi of the year 1998. It was therefore prayed that the claim of the petitioner be rejected.

I have heard Mr. Ashvini Swami, learned counsel for the petitioner and Mr. Kailash Joshi, learned counsel for the respondents and perused the record.

Mr. Ashvini Swami, learned counsel for the petitioner argued that the learned labour court ought to have given a clear finding on the question of non-compliance of Section 25-H of the Act of 1947 even if it has reached to the conclusion that the petitioner did not complete 240 days. Even in regard to the finding on the working of the petitioner being only 161 days, it has accepted the case of the Management that the

petitioner absented from duties from 15th January, 1986 without there any proof of that fact. The respondents did not prepare any seniority list in terms of Rule 77 of the Rules of 1947.

Learned counsel for the petitioner has relied upon the judgment of this Court in State vs. Harchad reported in 2001 (90) FLR 744 in which it was held that even if the workman did not complete 240 days in a calendar year but his junior has been retained in service, that would amount to violating of Section 25-H of the Act of 1947. Learned counsel for the petitioner therefore prayed that the award passed by the learned labout court be set aside and the writ petition be allowed and petitioner be held entitled to reinstatement with back wages and be treated continue in service.

On the other hand, Mr. Kailash Joshi, learned counsel for the respondents argued that the petitioner was an illegal appointee at the instance of the then Chairman of the Board who in a clandestine manner made his appointment on 11th

July, 1985 although no such record was maintained in the Board and the Chairman gave appointment to the petitioner even in regular pay scale on 08th August, 1985 much contrary to the Rules. The petitioner submitted the details with regard to his working/attendance for the period from 08th August, 1985 to 15th January, 1986 as delayed as on 16th January, 1986. Reference was made to the letter dated 23rd May, 1979 wherein the petitioner has claimed unpaid wages for a period from 11th May, 1985 to 08th August, 1986. According to this, a total period for which the petitioner worked was only 161 days. There was thus no violation of Section 25-F of the Act of 1947. So far as the employees namely Hemraj, Murlidhar and Gopi Kishan are concerned, their appointment was made by Directorate of the Local Bodies on regular basis and the petitioner could not compare himself with them as he was illegally appointed. It was therefore prayed that the writ petition be dismissed.

I have considered the arguments advanced by the learned counsel for the parties and perused the record.

The learned labour court in its award has taken into consideration Exhibit-1 dated 23rd May, 1989. This was an application which the petitioner submitted before the respondent Baord asking for payment of his unpaid wages for the period from 11th May, 1985 to 08th August, 1986. The petitioner admitted this document in his affidavit before the learned labour court. This was an admission by the petitioner himself that his period of working was confined to this period from 11th May, 1985 to 08th August, 1986 and this came to total number of 161 days. The petitioner could not prove as to by what method of recruitment he was engaged in service. He also could not prove that how and in what manner he was straightway given appointment by the Chairman. The respondents have submitted that so far as Hemraj, Murlidhar and Gopi Kishan are concerned, they were appointed under the orders of Directorate of Local Bodies. In this view of the matter, their appointment could not be treated at par with that of the petitioner. The petitioner was appointed way back in the year 1955 and he worked only for a period of 161 days.

In the circumstances, I do not find any illegality or infirmity in the award passed by the learned labour court. The writ petition being devoid of merit is dismissed. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chahar/-